

**Town of Underhill
Development Review Board Minutes
February 4, 2019**

Board Members Present:

Charles Van Winkle, Chair
Stacey Turkos, Vice Chair
Mark Green
Daniel Lee
Karen McKnight
Penny Miller
Shanie Bartlett, Alternate

Staff/Municipal Representatives Present:

Andrew Strniste, Zoning Administrator

Others Present:

None

6:35 PM – 02/04/2019 DRB Public Meeting

- DRB Members convened at Town Hall around 6:25 PM.
- [6:35] No public was in attendance, and therefore, no public comment was offered.
- [6:36] Staff Member Strniste advised that the next time the Board meets will likely be March 18, 2019 for an appeal hearing.

6:37 PM – Other Business

- [6:37] The Board discussed the minutes from December 3, 2018. A brief discussion ensued about feedback from Mr. Jason Croteau and Elaine Herman as it relates to the ReTribe Transformation Conditional Use Review application. Board Member Turkos made a motion to approve the minutes of December 3, 2018, which was seconded by Board Member McKnight. The motion was approved unanimously.
- [6:42] The Board discussed its meeting procedures as well the Robert's Rules of Order. Subsequently, the Board discussed the usefulness of the information/questions contained in the applications. Board Member Turkos opined that the usefulness dependent on the type of application and the applicant, while Board Member Green opined that the questions shouldn't be necessarily be eliminated in order to the keep the applicant(s) contemplating all the possible issues. Board Member McKnight suggested that the applications should be constructed in a way that ensures that applications are complete. Staff Member Strniste advised that the applications will contain a checklist to assist with making sure applications are complete.
- [6:52] Chair Van Winkle inquired about coordination of review as it relates to the Road Ordinance. Staff Member Strniste ensured that multiple Boards would not need to review access permits with the implementation of the new Road Ordinance. He then confirmed that the Board could solicit information from Nate Sullivan, Underhill Road foreman when they are reviewing an application requiring access permit review. Board Member Bartlett then asked about the educational aspect of a project prior to review by the Development Review Board. Staff Member Strniste advised he was trying slow down the process for the applicant. A brief discussion ensued about the cover page for staff reports.
- [7:02] The Board then discuss the job captain process, as well as the potential of utilizing Google documents going forward. Board Member Miller advised that they should start including "P/C" in the subject heading of the email when crafting decisions. She then asked if the finalize version of the decision be sent to the entire Board, which includes both the pdf versions and word document versions.

- [7:23] Chair Van Winkle advised that Alternates Shanie Bartlett, Mark Hamelin and Will Towle will continue to serve as alternates. That Board advised that the Google calendar is helpful.
- [7:24] Chair Van Winkle made clarifying remarks regarding the Robert's Rules of Order, specifically: all motions should be made in the positive; when motions are introduced, it should be seconded and then discussed; should an amendment to a motion be made, the Board shall vote on the amendment and then vote on the motion with the amendment; as well as call to question.
- [7:29] Chair Van Winkle inquired if anyone wanted to be chairman. Hearing no requests, he advised that he was willing to continue as chair person. Board Member Turkos advised that she would continue as Vice Chair, while Board Member Chapek confirmed with Chair Van Winkle at a previous date that he would continue as Clerk. Staff Member Strniste provided a brief background on an anticipated appeal pertaining to 407 Poker Hill Road.
- [7:47] Chair Van Winkle advised that the wastewater permit rules would likely be changing come July 1, 2019.
- [7:48] Board Member McKnight made a motion to enter into executive session to discuss pending litigation pertaining to the Duval Conditional Use Review Application. The motion was seconded by Board Member Turkos. No discussion ensued. Motion was approved unanimously.
- [8:32] Board Member Turkos made a motion to exit executive session. The motion was seconded by Board Member Miller. No discussion ensued. The motion was approved unanimously.
- [8:33] Board Member McKnight made a motion to approve the attached resolution, as updated by Staff Member Strniste. The motion was seconded by Board Member Turkos.
- [8:34] Board Member Lee made a motion to amend the resolution to include language regarding the applicant submitting a wastewater design for the proposed project. The motion was seconded by Board Member Bartlett. No discussion ensued. The motion was approved unanimously.
- [8:35] Discussion ensued about the original resolution, as updated by Staff Member Strniste, in regards to whether a qualified consultant should be included with the professional engineer language. The Board agreed that the design should be stamped by a professional engineer and exclude a qualified consultant. No further discussion occurred. The motion was approved unanimously.
- [8:36] Board Member Turkos made a motion to adjourn. The motion was seconded by Board Member McKnight. No discussion ensued. The motion was approved unanimously.

Submitted by:

Andrew Strniste, Planning Director & Zoning Administrator

These minutes of the 02/04/2019 meeting of the DRB were accepted
this 1st day of April, 2019.



Stacey Turkos, Development Review Board Vice Chair

These minutes are subject to correction by the Underhill Development Review Board. Changes, if any, will be recorded in the Final meeting minutes of the meeting of the DRB.

UNDERHILL DRB's REQUEST FOR REMAND

WHEREAS, the Town of Underhill DRB's decision, dated June 29, 2018, denying Peter Duval's application for conditional use review to convert a single-family dwelling with an attached accessory dwelling to a four-unit, multi-family dwelling, discusses in numerous places the applicant's failure to submit to the DRB sufficient information regarding his proposed wastewater system, thereby making it impossible for the DRB to render positive findings under numerous regulatory criteria under the Town's zoning regulations; and

WHEREAS, Mr. Duval's appeal of the DRB's decision is currently pending before the Superior Court, Environmental Division, in Docket No. 93-8-18 Vtec; and

WHEREAS, V.R.E.C.P. 5(i) provides that "[a]t the request of the tribunal appealed from, the court, at any time prior to judgment, may remand the case to that tribunal for its reconsideration;" and

WHEREAS, the Superior Court, Environmental Division, has inherent authority and discretion to remand a matter pending before it to the tribunal appealed from, including where a decision was based on incomplete or inadequate information (In re Jolley Associates, 2006 VT 132, ¶13); and

WHEREAS, under Vermont land use practice, it is preferable for an appropriate municipal panel to review evidence relevant to a zoning application and to render a decision thereon, in the first instance, before the Court conducts its de novo review on appeal; and

WHEREAS, due to Mr. Duval's failure or refusal to meet his prima facie burden and present the DRB with adequate evidence regarding his proposed wastewater system, the DRB was unable to review the impacts of his proposed project under all applicable criteria; and

WHEREAS, on information and belief, MR. Duval still has not applied for a Wastewater System & Potable Water Supply Permit or a developed a proper wastewater design plan for the project as proposed; and

WHEREAS, a remand to the DRB would allow the Board, upon submission to it of proper evidence, to review and consider issues related to the applicant's proposed wastewater system for the first time, and potentially make positive findings under additional applicable criteria, thereby narrowing the scope of any subsequent appeal to the Environmental Division and conserving the resources of the parties and the Court;

NOW THEREFORE, the Underhill DRB hereby moves to request that the Court exercise its discretion, pursuant to V.R.E.C.P. 5(i) or otherwise, to partially remand to the DRB, without prejudice, those issues raised in Mr. Duval's Amended Statement of Questions in Docket No. 93-8-18 Vtec, that relate to his proposed wastewater system, with instructions that Mr. Duval submit to the DRB evidence of either a Wastewater System & Potable Water Supply Permit or a proper wastewater design plan stamped by a professional engineer within 60 days of the date of remand or risk dismissal of his appeal for upon proper motion filed by the Town.